

HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WSOU INVESTMENTS, LLC d/b/a BRAZOS
LICENSING AND DEVELOPMENT,

Plaintiff,

v.

F5 NETWORKS, INC.,

Defendant.

No. 2:20-cv-01878-BJR
No. 2:21-cv-00124-BJR
No. 2:21-cv-00125-BJR
No. 2:21-cv-00126-BJR

**DECLARATION OF CHARLES A. NAGGAR IN SUPPORT OF PLAINTIFF'S
MOTION FOR LEAVE TO AMEND ITS INFRINGEMENT CONTENTIONS**

I, Charles A. Naggar, declare as follows:

1. I am an Associate with the law firm of Kasowitz Benson Torres LLP. I am one of the attorneys responsible for the representation of Plaintiff WSOU Investments, LLC d/b/a Brazos Licensing and Development ("WSOU") in the above-captioned litigations against Defendant F5 Networks, Inc. ("F5"), and make this declaration in support of WSOU's Motion for Leave to Amend Its Infringement Contentions.

2. If called to testify under oath in court, I could and would testify competently to the facts stated herein.

NAGGAR DECLARATION IN SUPPORT OF - 1
PLAINTIFF'S MOTION FOR LEAVE TO AMEND ITS
INFRINGEMENT CONTENTIONS (CASE NOS. 20-CV-01878-BJR,
2:21-CV-00124-BJR, 2:21-CV-00125-BJR, 2:21-CV-00126-BJR)

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3. On January 18, 2022, I sent an e-mail with the subject line “WSOU v. F5: Plaintiff’s Amended Infringement Contentions” to counsel for F5. In that e-mail, I provided a link from which F5’s counsel could download WSOU’s amended infringement contentions for U.S. Patent Nos. 9,584,330 (“the ’330 patent”), 8,248,940 (“the ’940 patent”), and 7,548,945 (“the ’945 patent”), including clean copies and versions showing track-changes over WSOU’s corresponding April 2021 Preliminary Infringement Contentions (*see infra* ¶¶ 14-16). I also stated in that email: “WSOU also intends to serve amended infringement contentions for the ’884 patent in the coming days.” A copy of this e-mail is provided herewith. *See infra* ¶ 18.

4. The next day, January 19, 2022, I sent a follow-up e-mail with the subject line “RE: WSOU v. F5: Plaintiff’s Amended Infringement Contentions” to counsel for F5. In that e-mail, I provided a link from which F5’s counsel could download WSOU’s amended infringement contentions for U.S. Patent No. 7,953,884 (“the ’884 patent”), including clean copies and redlined versions showing track-changes over WSOU’s corresponding April 2021 Preliminary Infringement Contentions (*see infra* ¶ 13). A copy of this e-mail is provided herewith. *See infra* ¶ 18.

5. Attached hereto as **Exhibit A** is a true and correct copy of Plaintiff’s Amended Disclosure of Asserted Claims and Infringement Contentions in Case No. 2:20-CV-01878-BJR (W.D. Wa.), dated January 19, 2022, together with Exhibit 1 thereto, titled “Infringement Claim Chart of U.S. Patent No. 7,953,884.” These materials were provided to counsel for F5 via the link in my January 19, 2022 e-mail. *See supra* ¶ 4. **[FILED UNDER SEAL]**

6. Attached hereto as **Exhibit B** is a true and correct copy of Plaintiff’s Amended Disclosure of Asserted Claims and Infringement Contentions in Case No. 2:21-CV-00124-BJR

1 (W.D. Wa.), dated January 18, 2022, together with Exhibit 1 thereto, titled “Infringement Claim
 2 Chart of U.S. Patent No. 9,584,330.” These materials were provided to counsel for F5 via the link
 3 in my January 18, 2022 e-mail. *See supra* ¶ 3. **[FILED UNDER SEAL]**

4 7. Attached hereto as **Exhibit C** is a true and correct copy of Plaintiff’s Amended
 5 Disclosure of Asserted Claims and Infringement Contentions in Case No. 2:21-CV-00125-BJR
 6 (W.D. Wa.), dated January 18, 2022, together with Exhibit 1 thereto, titled “Infringement Claim
 7 Chart of U.S. Patent No. 8,248,940.” These materials were provided to counsel for F5 via the link
 8 in my January 18, 2022 e-mail. *See supra* ¶ 3. **[FILED UNDER SEAL]**

9 8. Attached hereto as **Exhibit D** is a true and correct copy of Plaintiff’s Amended
 10 Disclosure of Asserted Claims and Infringement Contentions in Case No. 2:21-CV-00126-BJR
 11 (W.D. Wa.), dated January 18, 2022, together with Exhibit 1 thereto, titled “Infringement Claim
 12 Chart of U.S. Patent No. 7,548,945.” These materials were provided to counsel for F5 via the link
 13 in my January 18, 2022 e-mail. *See supra* ¶ 3. **[FILED UNDER SEAL]**

14 9. Attached hereto as **Exhibit E** is a true and correct copy of the redlined versions of
 15 Plaintiff’s Amended Disclosure of Asserted Claims and Infringement Contentions in Case No.
 16 2:20-CV-01878-BJR (W.D. Wa.), dated January 19, 2022, together with Exhibit 1 thereto, titled
 17 “Infringement Claim Chart of U.S. Patent No. 7,953,884,” which were provided to counsel for F5
 18 via the link in my January 19, 2022 e-mail. *See supra* ¶ 4. **[FILED UNDER SEAL]**

19 10. Attached hereto as **Exhibit F** is a true and correct copy of the redlined versions of
 20 Plaintiff’s Amended Disclosure of Asserted Claims and Infringement Contentions in Case No.
 21 2:21-CV-00124-BJR (W.D. Wa.), dated January 18, 2022, together with Exhibit 1 thereto, titled
 22

1 “Infringement Claim Chart of U.S. Patent No. 9,584,330,” which were provided to counsel for F5
 2 via the link in my January 18, 2022 e-mail. *See supra* ¶ 3. **[FILED UNDER SEAL]**

3 11. Attached hereto as **Exhibit G** is a true and correct copy of the redlined versions of
 4 Plaintiff’s Amended Disclosure of Asserted Claims and Infringement Contentions in Case No.
 5 2:21-CV-00125-BJR (W.D. Wa.), dated January 18, 2022, together with Exhibit 1 thereto, titled
 6 “Infringement Claim Chart of U.S. Patent No. 8,248,940,” which were provided to counsel for F5
 7 via the link in my January 18, 2022 e-mail. *See supra* ¶ 3. **[FILED UNDER SEAL]**

8 12. Attached hereto as **Exhibit H** is a true and correct copy of the redlined versions of
 9 Plaintiff’s Amended Disclosure of Asserted Claims and Infringement Contentions in Case No.
 10 2:21-CV-00126-BJR (W.D. Wa.), dated January 18, 2022, together with Exhibit 1 thereto, titled
 11 “Infringement Claim Chart of U.S. Patent No. 7,548,945,” which were provided to counsel for F5
 12 via the link in my January 18, 2022 e-mail. *See supra* ¶ 3. **[FILED UNDER SEAL]**

13 13. Attached hereto as **Exhibit I** is a true and correct copy of Plaintiff’s Disclosure of
 14 Asserted Claims and Infringement Contentions in Case No. 2:20-CV-01878-BJR (W.D. Wa.),
 15 dated April 8, 2021, together with Exhibit 1 thereto, titled “Infringement Claim Chart of U.S.
 16 Patent No. 7,953,884,” which WSOU served on F5 on April 8, 2021. These materials are the
 17 Preliminary Infringement Contentions for U.S. Patent No. 7,953,884 that I referred to above. *See*
 18 *supra* ¶ 3.
 19

20 14. Attached hereto as **Exhibit J** is a true and correct copy of Plaintiff’s Corrected
 21 Disclosure of Asserted Claims and Infringement Contentions in Case No. 2:21-CV-00124-BJR
 22 (W.D. Wa.), dated April 9, 2021, together with Exhibit 1 thereto, titled “Infringement Claim Chart
 23 of U.S. Patent No. 9,584,330,” which WSOU served on F5 on April 9, 2021. These materials are
 24
 25

1 the Preliminary Infringement Contentions for U.S. Patent No. 9,584,330 that I referred to above.
 2 *See supra* ¶ 4.

3 15. Attached hereto as **Exhibit K** is a true and correct copy of Plaintiff's Disclosure
 4 of Asserted Claims and Infringement Contentions in Case No. 2:21-CV-00125-BJR (W.D. Wa.),
 5 dated April 8, 2021, together with Exhibit 1 thereto, titled "Infringement Claim Chart of U.S.
 6 Patent No. 8,248,940," which WSOU served on F5 on April 8, 2021. These materials are the
 7 Preliminary Infringement Contentions for U.S. Patent No. 8,248,940 that I referred to above. *See*
 8 *supra* ¶ 3.

9 16. Attached hereto as **Exhibit L** is a true and correct copy of Plaintiff's Disclosure of
 10 Asserted Claims and Infringement Contentions in Case No. 2:21-CV-00126-BJR (W.D. Wa.),
 11 dated January 18, 2022, together with Exhibit 1 thereto, titled "Infringement Claim Chart of U.S.
 12 Patent No. 7,548,945." These materials are the Preliminary Infringement Contentions for U.S.
 13 Patent No. 7,548,945 that I referred to above. *See supra* ¶ 3.

14 17. Attached hereto as **Exhibit M** is a true and correct copy of an e-mail chain with
 15 the subject line "RE: WSOU v. F5 - Motion for Leave to Amend Invalidity Contentions"
 16 comprising e-mails dated December 13-16, 2021 between counsel for WSOU and counsel for F5
 17 in connection with the above-captioned actions.

18 18. Attached hereto as **Exhibit N** is a true and correct copy of an e-mail chain with the
 19 subject line "RE: WSOU v. F5: Plaintiff's Amended Infringement Contentions" comprising e-
 20 mails dated January 18, 2022 – February 10, 2022 between counsel for WSOU and counsel for
 21 F5 in connection with the above-captioned actions. This e-mail chain includes the two e-mails
 22 that I described above. *See supra* ¶¶ 3, 4.

1 19. Attached hereto as **Exhibit O** is a true and correct copy of an e-mail chain with the
2 subject line “RE: [SERVICE] WSOU v. F5 Networks: Deposition Notice” comprising e-mails
3 dated October 18, 2021 – December 14, 2021 between counsel for WSOU and counsel for F5 in
4 connection with the above-captioned actions.

5 20. Attached hereto as **Exhibit P** is a true and correct copy of excerpts from the
6 transcript of the February 1, 2022 deposition of Saumitra Prabhudesai in the above-captioned
7 actions.
8

9 21. Attached hereto as **Exhibit Q** is a true and correct copy of Defendant F5 Networks,
10 Inc.’s Non-Infringement Contentions, dated June 21, 2021, in connection with the above-
11 captioned actions, including Exhibit E thereto, a document titled “F5’s Initial Non-Infringement
12 Contentions Regarding U.S. Patent No. 7,548,945 for the BIG-IP Domain Name System (DNS),
13 F5 VIPRION Platform, and F5 BIG-IP iSeries Platform.” Exhibit R does not include Exhibits A-
14 D of Defendant F5 Networks, Inc.’s Non-Infringement Contentions.
15

16 22. Attached hereto as **Exhibit R** is a true and correct copy of an excerpt of an e-mail
17 chain that includes an e-mail dated November 17, 2021 from Angela Tarasi, counsel of record for
18 F5, to counsel for WSOU with the subject line “WSOU v. F5 - Status Report,” together with the
19 e-mail’s attachment (filename: “F5 - Draft Portion Joint Status Report.docx”).
20

21 23. Attached hereto as **Exhibit S** is a true and correct copy of an excerpt from an e-
22 mail chain with the subject line “RE: WSOU v. F5: F5 Technical Document Deficiency”
23 comprising e-mails dated January 12-30, 2022 between counsel for WSOU and counsel for F5 in
24 connection with the above-captioned actions. The attached excerpt includes an e-mail dated
25 January 30, 2022 from Angela Tarasi, counsel of record for F5.

24. Attached hereto as **Exhibit T** is a true and correct copy of a Verbatim Report of Proceedings before the Honorable Barbara J. Rothstein, which provides a transcript of the September 30, 2021 telephone motion hearing in the above-captioned actions.

25. Attached hereto as **Exhibit U** is a true and correct copy of excerpts from the transcript of the December 1, 2021 deposition of Jason Shriver in the above-captioned actions.

26. Attached hereto as **Exhibit V** is a true and correct copy of a document that was provided to counsel for WSOU as an attachment (filename: "AEO_Ex 1 Am Inf Cont (884 Pat) REDLINE - KS MARK UP.pdf") to a February 10, 2022 e-mail from Ryan Schmid, counsel of record for F5, that represented that the attachment is a highlighted version of the claim chart from the redlined version of Plaintiff's proposed amended infringement contentions for U.S. Patent No. 7,953,884 (*see supra* ¶ 9), wherein the color of the highlighting should be interpreted as follows: "The highlighting follows the same principles set forth previously. Green indicates revisions F5 can agree to. Red indicates revisions that F5 cannot presently agree to. Blue indicates revisions that require clarification from WSOU, as it is unclear whether they are directed to theories disclosed in WSOU's original contentions or whether the amendments are directed to new theories and/or new 'Accused Instrumentalities.'" *See* Exhibit N hereto at 2; *supra* ¶ 18 (describing Exhibit N); *infra* ¶ 28 (describing said "principles set forth previously"). **[FILED UNDER SEAL]**

27. Attached hereto as **Exhibit W** is a true and correct copy of a document that was provided to counsel for WSOU as an attachment (filename: "AEO_Ex 1 Am Inf Cont (330 Pat) REDLINE - KS MARK UP.pdf") to a February 10, 2022 e-mail from Ryan Schmid, counsel of record for F5, that represented that the attachment is a highlighted version of the claim chart from

1 the redlined version of Plaintiff's proposed amended infringement contentions for U.S. Patent No.
 2 9,584,330 (*see supra* ¶ 10), wherein the color of the highlighting should be interpreted as stated
 3 above. *See supra* ¶ 25. **[FILED UNDER SEAL]**

4 28. Attached hereto as **Exhibit X** is a true and correct copy of a document that was
 5 provided to counsel for WSOU as an attachment (filename: "AEO_Ex 1 Am Inf Cont (940 Pat)
 6 REDLINE - KS MARK UP.pdf") to a February 10, 2022 e-mail from Ryan Schmid, counsel of
 7 record for F5, that represented that the attachment is a highlighted version of the claim chart from
 8 the redlined version of Plaintiff's proposed amended infringement contentions for U.S. Patent No.
 9 8,248,940 (*see supra* ¶ 11), wherein the color of the highlighting should be interpreted as stated
 10 above. *See supra* ¶ 25. **[FILED UNDER SEAL]**

11 29. Attached hereto as **Exhibit Y** is a true and correct copy of a document that was
 12 provided to counsel for WSOU as an attachment (filename: "AEO_Ex 1 Am Inf Cont (945 Pat)
 13 REDLINE - KS MARK UP.pdf") to a February 2, 2022 e-mail from Ryan Schmid, counsel of
 14 record for F5, that represented that the attachment is a highlighted version of the claim chart from
 15 the redlined version of Plaintiff's proposed amended infringement contentions for U.S. Patent No.
 16 7,548,945 (*see supra* ¶ 12), wherein the color of the highlighting should be interpreted as follows:

- 17 • With respect to amendments highlighted in green: Either "F5 can agree to
 18 amendments based on F5's confidential materials produced during discovery
 19 that support WSOU's previously disclosed infringement theories on the
 20 accused products for the '945 patent, specifically DNS, BIG-IQ, vCMP
 21 software and VIPRION and iSeries hardware"; or "F5 can also agree to
 22 amendments based on F5's public materials produced during discovery that
 23
 24
 25

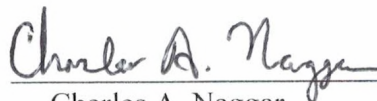
support WSOU's previously disclosed infringement theories on the accused products for the '945 patent, specifically DNS, BIG-IQ, vCMP software and VIPRION and iSeries hardware."

- With respect to amendments highlighted in red: "F5 cannot presently agree to amendments that advocate new infringement theories and/or new 'Accused Instrumentalities.'"
- With respect to amendments highlighted in blue: "For a number of amendments, it is unclear whether they are directed to theories disclosed in WSOU's original contentions or whether the amendments are directed to new theories and/or new 'Accused Instrumentalities.'"

See Exhibit N hereto at 7; *supra* ¶ 18. **[FILED UNDER SEAL]**

I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief, formed after reasonable inquiry under the circumstances.

Executed on the 10th day of February, 2022, in New York, New York.


Charles A. Naggar

CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2022, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

s/ Christy A. Nelson
Christy A. Nelson